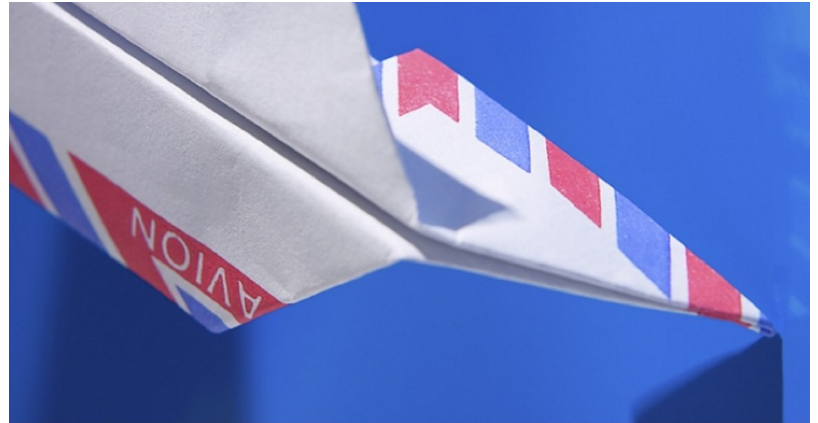




Written by [Joe Wolverton, II, J.D.](#) on May 8, 2014

## Rand Paul Will Block Barron Nomination Until Drone Memo Released

Senator Rand Paul (R-Ky.) is ready to reject the offer by the Obama administration to give senators a peek at a federal court nominee's explanation of the legality of using drones to kill American citizens. The freshmen firebrand said that anything less than letting the American people look at the document is "inadequate."



"I can confirm that the administration is working to ensure that any remaining questions members of the Senate have about Mr. Barron's legal work at the Department of Justice are addressed, including making available in a classified setting a copy of the Al-Awlaki opinion to any senator who wishes to review it, prior to Mr. Barron's confirmation," White House Press Secretary Jay Carney said at a press event.

Paul isn't falling for the half measure and is already showing his commitment to his position by promising to block the nomination of federal appeals court nominee David Barron. Barron is the author of a Justice Department memo purporting to provide a legal justification for the drone strike that killed Anwar al-Awlaki. Paul maintains that until that memo is made public, Barron will not get an up or down vote in the Senate.

"A federal court has ordered the public release of a redacted legal memo authored by Barron and I believe that anything short of that is inadequate," Paul said in a statement released Tuesday. "I will continue to oppose this nomination until the document is released."

On April 21, a federal appeals court in New York [ordered the Obama administration to release at least part of the memo](#) that sets out the president's position on the constitutionality of his order to kill Anwar al-Awlaki, an American citizen. Awlaki was targeted by the president and later assassinated by a drone strike in 2011 while he lived in Yemen.

The *New York Times* reported that the three-judge panel "unanimously" reversed a lower court decision, insisting that the federal government forfeited its secrecy defense by making "numerous public statements" explaining why it is legal for the president to order Americans be killed.

"Whatever protection the legal analysis might once have had, has been lost by virtue of public statements of public officials at the highest levels and official disclosure of the D.O.J. White Paper," Judge Jon O. Newman wrote for the panel of the U.S. Court of Appeals for the Second Circuit, as quoted in the *Times* article.

In a letter to Senate Majority Leader Harry Reid (D-Nev.), Paul referenced the appeals court decision:



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On April 21, 2014, the United States Court of Appeals for the Second Circuit ordered that the Department of Justice disclose a redacted version of the Office of Legal Counsel memorandum that authorized the targeted killing of Anwar al-Awlaki. David Barron was one of the principal writers of this memorandum. He has spoken openly about his role in crafting the administration's legal position that it can kill Americans abroad without due process.

He continued:

It would be irresponsible for the Senate to move forward on this nomination until the Department of Justice has complied with the court order to disclose this document, which will highlight Barron's views on international law, the Fifth Amendment, and its guarantee of due process, and the civil liberties of our nation's citizens.

In February 2013, the White House claimed that killing Americans without due process is "legal," "necessary," "ethical," and "wise."

In commenting on a white paper released by the Justice Department and obtained by NBC News, White House Press Secretary Jay Carney used those words to describe the targeted assassination of American citizens overseas. That is, those marked for death by drone (i.e., those whom the president believes are collaborating — in a notably undefined manner — with "al-Qaeda and its associated forces") have no rights and can be killed at will.

In a footnote, the Justice Department explained that the "laws of war" will be used to determine whether a group is a "co-belligerent" with al-Qaeda. That is the sum of the guidance and notice given to those Americans residing overseas who might unknowingly be targets for the next Hellfire missile.

Paul's promise to prevent Barron from taking his pro-assassination attitude to the federal bench is encouraging.

President Obama's nearly daily approval of drone-delivered assassinations is an effrontery to over 650 years of our Anglo-American law's protection from autocratic decrees of death without due process of law. When any president usurps the power to place names on a kill list and then have those people summarily executed without due process, he places our Republic on a trajectory toward tyranny and government-sponsored terrorism.

Of course, it would be another matter if those targeted and executed by the president were armed enemy combatants: They were not.

If Awlaki (or any of the other Americans Barack Obama has ordered murdered) was an enemy soldier captured during wartime, he would have been afforded certain rights guaranteed to POWs.

Those slated for White House-approved assassination, however, are not allowed any rights — neither the due process rights given to those accused of crimes nor the rights of fair treatment given to enemies captured on the battlefield.

The president has assumed all power over life and death and created ex nihilo a new category of individual — one deprived of all rights altogether.

Barron's nomination could come before the body of the Senate this week. In order to secure a seat on the federal bench, Barron would need the support of only a simple majority of senators. Paul's opposition, however, could keep the final vote from happening for several days.

Paul is no stranger to delaying votes on Obama nominees.



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[On March 6, Paul ended his ended his epic almost-13-hour filibuster](#) of the nomination of John Brennan as head of the CIA.

Tag-teaming with more than a dozen of his colleagues, including Senators Ted Cruz (R-Texas), Mike Lee (R-Utah), and Marco Rubio (R-Fla.), Paul delivered body blow after body blow to the case made by President Obama that he has the authority — “in extraordinary circumstance” — to order a deadly drone strike to kill Americans on American soil.

During his speech, Paul called that response “frightening.” And he said, “When I asked the president, can you kill an American on American soil, it should have been an easy answer. It’s an easy question. It should have been a resounding, an unequivocal, ‘No.’ The president’s response? He hasn’t killed anyone yet. We’re supposed to be comforted by that.”

At 4:45 p.m., Senate Majority Leader Harry Reid (D-Nev.) had had enough of these tough questions. He rose to ask Senator Paul when he would be ending his filibuster and allow a vote.

Paul said he’d be happy to sit down if “if the president or the attorney general will clarify that they will not kill Americans on American soil.”

This time around, Paul’s proposition to block Barron’s nomination has bipartisan support. Senator Mark Udall (D-Colo.) has come out in favor of forcing the president to reveal the memo to the public before he gets a vote on his judicial nominee.

“Barron’s nomination understandably raises key questions about the administration’s legal justification for the targeted killing of Americans and about its year-old pledge of greater transparency,” said Udall, as quoted in the *Washington Post*. He is quoted as saying that the Obama administration should obey the court order “to release its redacted legal justification for killing a U.S. citizen.” He added, “Unless the White House complies, I cannot support David Barron’s nomination.”

The White House has responded to neither the senators’ demands nor the Second Circuit’s order to release the redacted memo.

*Joe A. Wolverton, II, J.D. is a correspondent for The New American and travels nationwide speaking on nullification, the Second Amendment, the surveillance state, and other constitutional issues. Follow him on Twitter @TNAJoeWolverton and he can be reached at [jwolverton@thenewamerican.com](mailto:jwolverton@thenewamerican.com).*



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